IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 336 of 2001

in

SPECIAL CIVIL APPLICATION No 13584 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES; 3 to 5 NO

K B TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 336 of 2001

TANNA ASSOCIATES for Appellant

MR AJ DESAI AGP for Respondents

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 17/10/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. This appeal under Clause 15 of the Letters Patent is preferred from the order in Special Civil Application No.13854 of 2000, whereby, the learned single Judge dismissed the petition of the appellant only on the ground that it was premature.

2. The appellant sought to challenge initiation of departmental enquiry pursuant to the chargesheet dated 1.6.2000 which contained the allegations of misconduct which had allegedly taken place about 18 years ago. Thus, the Court was called upon to quash the chargesheet only on the ground of delay. The petition of the appellant having been summarily dismissed, the respondents had no occasion to appear. However, upon notice being issued in this appeal, the respondents have appeared and filed an affidavit-in-reply of the Under Secretary of the department concerned.

3. Amplifying the essential facts, the learned counsel for the appellant argued that the departmental enquiry in question was being initiated against the appellant after 18 years of the alleged incident and on the eve of the meeting of the Departmental Promotion Committee in which the case of the appellant for promotion was to be considered. It was submitted that in all 19 officers were alleged to be involved in the acts of misconduct out of whom nine officers were allowed to retire without initiation of any enquiry, four officers have retired after initiation of departmental enquiry without the same being concluded and one officer was already promoted after calling for his explanation. Thus, only five officers presently in service were chargesheeted. On these facts, it was submitted that in case of gross and unexplained delay of 18 years, legal mala fides in initiating the departmental enquiry ought to be inferred as due promotion would be denied to the delinquent during the pendency of the disciplinary proceedings which may outlast his remaining period of service.

4. The judgment of the Apex Court in STATE OF MADHYA PRADESH v. BANI SINGH [AIR 1990 SC 1308] was relied upon on behalf of the appellant to submit that when there was no satisfactory explanation for the inordinate delay in issuing the chargesheet, it would be unfair to permit departmental enquiry to proceed. Relying upon another

judgment of the Supreme Court in STATE OF ANDHRA PRADESH v. N. RADHAKISHNAN [AIR 1998 SC 1833], it was submitted that even in a case where enquiry proceedings were initiated but not concluded for a number of years without the enquiry proceedings being obstructed or delayed by the delinquent, the charge memo was liable to be quashed.

5. As stated earlier, we have the advantage of going through the explanation tendered by the respondents in the form of affidavit-in-reply. It is stated therein that pursuant to a liquor-tragedy in Vadodara City in the year 1986, an offence was registered in 1987 and on 12.5.1988 the State Government had entrusted the investigation to the Police Commissioner, Vadodara. The Deputy Police Commissioner, Vadodara submitted his report to the State Government on 29.6.1989. During the course of the investigation it was revealed that a firm to which licence for allotment of denatured spirit was issued for manufacture of sodium alginate during the period from 1979-80 to 1986 had misused the stock. Therefore, the officers and employees of the Prohibition and Excise Department were held liable for not detecting the irregularities committed by the licensee. Those officers and employees of the Department were alleged to have taken illegal gratification and submitted false reports about the licensee. Therefore, sanction to prosecute such officers was also sought from the State Government under the provisions of Section 197 of the Criminal Procedure Code. However, with a view to obtaining recommendation on the course of action to be adopted against such officers, the Government had on 10.5.1991 constituted a committee consisting of the then Additional Chief Secretary, Finance Department and the then Director of Anti Corruption Bureau. That committee submitted its report on 19.8.1996 which was sent to the Vigilance Commission on 21.7.1997. On 26.9.1997, the Vigilance Commission recommended initiation of departmental enquiry against the officers and the employees concerned. Thereafter, a chargesheet was served upon an officer on 30.9.1997 as he was retiring on that day. Thereafter, on 6.11.1999, the Government decided to take departmental action against the other officers concerned and that is how the successive chargesheets dated 23.5.2000, 31.5.2000 and 1.6.2000 came to be issued. It is admitted that the recommendation of the Departmental Promotion Committee in respect of two other officers, besides the petitioner, were kept in a sealed cover in view of the prevailing instructions of the State Government. It is denied that certain elements had managed to see that the petitioner was not promoted. Thus, the delay is sought

to be explained by the above chronology of events.

6. The chargesheet under challenge states that the appellant was serving as Prohibition and Excise Inspector, Class-III, South Zone, Vadodara for the period from 1979 to May, 1984 during which period he was visiting the factory of the licensee and had failed to report non-production of sodium alginate by the licensee. It is alleged that the appellant had avoided to send report regarding the factory being closed and was taking bribe for the purpose. Thus, the charge is mainly of lack of honesty and integrity in the discharge of his duties during the period of his posting as aforesaid for the period from 1979 to May, 1984. Assuming that the circumstances appearing against the appellant came to light during the investigation into the liquor tragedy that happened in the year 1986, the report of the Deputy Police Commissioner was submitted on 29.6.1989. The Government thought it fit to constitute a committee to obtain recommendations about the course of action to be adopted against the officers concerned. The committee admittedly took more than five years to submit its report and the forwarding of that report to the Vigilance Commission took almost a year. Even after the recommendation of the Vigilance Commission to initiate department enquiry, the Government took more than two years in deciding to initiate departmental action against the officers concerned. Any explanation worth the name for such long delay in submitting the report by the specially constituted committee and in deciding to initiate departmental action is conspicuous by its absence in the otherwise elaborate affidavit filed by the Under Secretary of the Department concerned. Therefore, the conclusion that the delay in issuance of the chargesheet and initiation of departmental action is not explained at all is inescapable. In this factual background, the ratio of the judgment of the Supreme Court relied upon on behalf of the appellant has to be applied.

7. In STATE OF MADHYA PRADESH v. BANI SINGH (supra), the chargesheet was issued in respect of certain incidents that had happened about 12 years ago. It was not the case of the department that they were not aware of the alleged irregularities but investigations were going on, according to the department. There was no satisfactory explanation for the inordinate delay in issuing the charge memo and in such circumstances, the Court took the view that it would be unfair to permit the departmental enquiry to be proceeded with at that stage. In the other judgment of the Supreme Court in STATE OF

ANDHRA PRADESH v. N. RADHAKISHAN (supra), the incriminating report about the irregularities was made in the year 1987 and the charges were framed only in 1995. There was no explanation whatsoever for the delay in concluding the enquiry proceedings. It was nobody's case that the delinquent had, at any stage, tried to obstruct or delay the enquiry proceedings and in such circumstances, the charge memo was held to be liable to be quashed. The Supreme Court observed that:

> "The essence of the matter is that the Court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings."

8. In absence of any explanation whatsoever for the prolonged delay in issuance of the chargesheet in the facts of the present case and applying the ratio of the above judgments, we are of the opinion that the impugned chargesheet and initiation of disciplinary proceedings cannot be allowed to stand against the appellant. We are also of the considered opinion that the inordinate and unexplained delay in issuance of the chargesheet is on a footing worse to delay in concluding the departmental proceedings after its initiation. Having the admission of the respondent on record that the department was aware of the alleged misconduct on the part of the appellant since the year 1989, the delay subsequent thereto has to be viewed all the more seriously. In such cases of delayed issuance of chargesheet, the delinquent would not be aware of an impending departmental action and, in all probabilities, he would be seriously prejudiced in his defence as important evidence in his favour could have been lost or destroyed and his own memory would get blurred during the long period of complacency. Apart from these considerations, when a specific query was made as regards the time-limit envisaged for completion of the departmental enquiry, the learned Assistant Government Pleader appearing for the respondent expressly stated the inability of the department to make any statement in that regard. In such circumstances, it would be proper and

necessary to set aside the impugned judgment and allow the original petition.

9. In the result, in the facts and for the reasons discussed hereinabove, the appeal is allowed and the chargesheet dated 1.6.2000 under challenge in the original petition is set aside.

Sd/-

(J.N.Bhatt, J.)

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)